

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No.3 of 1989

in

CIVIL APPLICATION No.2117 of 1988

in

SPECIAL CIVIL APPLICATION No.2683 of 1988

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For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

ADDITIONAL DEPUTY INSPECTOR GENERAL

Versus

SHYAMSING PKE CC

Appearance:

MR A.K. Clerk for Appellants

MR GC RAY for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 17/12/98

ORAL JUDGEMENT : (Per C.K. Buch, J.)

The respondent was the original petitioner of the above Special Civil Application, wherein he had challenged the order of reversion from the post of Head Constable to the post of Naik in his parent cadre of Central Reserve Police Force ("CRPF" for brevity). The petitioner had challenged the reversion to the substantive rank of his parent cadre from the post of ad hoc Head Constable (Mason), Head Constable, Pioneer Platoon of PKE of CRPF, Gandhinagar with effect from 2.9.1987. According to the respondent/ original petitioner his reversion was illegal, he was regularly promoted to the post of Head Constable and he has worked with Pioneer Platoon in the capacity of Head Constable for a pretty long time and he has been wrongly reverted and sent back to the parent cadre. While agitating the grievance by filing writ petition in this court, the petitioner had submitted that though the Honourable Supreme Court had directed the respondents to absorb the personnel working in the Pioneer Platoon he has been wrongly and arbitrarily reverted back. The petitioner relied on an interim order passed by the Delhi High Court, which was passed in favour of 46 CRPF personnel similarly situated in the said capacity or contingency. Considering the interim order of the Delhi High Court, the learned Single Judge while dealing with the Civil Application No.2117 of 1988 preferred by the petitioner granted interim relief in favour of the petitioner and ultimately after hearing the parties the Civil Application was allowed and against the very order passed in Civil Application, the present Letters Patent Appeal is preferred by the original respondents.

2. It is required to be noted that at the time of admitting the Special Civil Application, no interim relief was granted in favour of the petitioner.

3. The appellant/ original respondents have assailed the order passed by the learned Single Judge mainly on the ground that the order reverting the petitioner is passed in consonance with the directions issued by the Apex Court dated 3.3.1987 in Writ Petition No.980A of 1986 filed by the other employees of CRPF. The order of the Apex Court is produced as Annexure II with this Appeal (at page 38). We would like to quote the relevant part of the order of the Apex Court because the appellants mainly rely on this aspect of the order :

" it is stated on behalf of the
Union of India that postings of the petitioners
in Pioneer Platoons will be regularised in
accordance with the Recruitment Rules framed in

May 1986. In view of the above statement we direct the respondents to complete the process of regularisation of the petitioners and other similarly situated within four months from today."

4. It is the say of the appellants that after this direction of the Apex Court, the department had undertaken exercise of regularisation of persons, who were otherwise entitled to absorption in view of the existing Recruitment Rules. The document shows that 17 personnel were absorbed as per the direction of the Apex Court and this order is produced vide Annexure I dated 25.8.1997. As regards the remaining 47 personnel, who were found lacking in qualification/ conditions laid down in the Recruitment Rules, the Government had decided to post them back to their parent cadre in their substantive rank. It is not the matter of dispute that the respondent/ original petitioner was promoted only on ad hoc basis and at that relevant time he was Naik (Armour). It is also clear from the order that irrespective of reversion, the Union of India has protected his pay and allowances. So it is difficult to believe that the reversion of the respondent/ original petitioner was not in accordance with the directions given by the Apex Court. The affidavit filed by the petitioner and the averments made in the Special Civil Application does not convince us that though he was fit according to the conditions of the Recruitment Rules or was otherwise qualified, he has not been treated at par with the persons who have been regularised by the Union of India with the Pioneer Platoon of the CRPF. Merely because a person has worked at a particular status or rank on ad hoc basis and if for good administrative reasons he is to be sent back to the original cadre and post, unless it is specifically brought on record that he has been discriminated or some powers are exercised colourably, the court, at the time of exercising jurisdiction under Article 226 or 227 of the Constitution, should not interfere with the administrative decisions taken in accordance with the Rules. The Honourable Supreme Court, at the time of passing the above referred direction to the Union of India, has emphasised that at the time of regularisation, the department is entitled to consider the relevant Recruitment Rules. And even it is not the say of the petitioner that irrespective of the Rules each and every person promoted on ad hoc basis should be regularised. At the time of granting interim order staying the order of reversion, the learned Single Judge ought to have considered the nature of order passed by

the Delhi High Court and the Apex Court, which were very much on record at that relevant time.

5. The learned counsel appearing for the respondent/ original petitioner, Mr. Ray was absent yesterday, when the matter was called out; and in the interest of justice we adjourned it for today on our own. But even today, Mr. Ray, learned advocate for the respondent/ original petitioner is absent. Therefore, there was no active assistance from the respondent/ original petitioner. At the time of admitting this LPA, the Division Bench of this Court has stayed the interim order passed by the learned Single Judge vide order dated 1.2.1989. It seems that the original petitioner was reverted back and the Special Civil Application was filed after lapse of several months, the petitioner might have lost interest in this litigation or by now he might have been promoted. Without going into the details of such facts or discussion, we are inclined to allow this appeal. Therefore, the appeal is allowed. The order passed by the learned Single Judge in Civil Application No.2117 of 1988 is hereby quashed and set aside. No order as to costs.

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